

**PT 97-62**

**Tax Type: PROPERTY TAX**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

**BIG TEN  
CONFERENCE, INC.,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No: 94-16-1415**

**Real Estate Tax Exemption  
For 1994 Tax Year**

**P.I.N: 12-02-114-060**

**Cook County Parcel**

**Alan I. Marcus,  
Administrative Law Judge**

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Ms. Sally L. Davis of Sonnenschein, Nath & Rosenthal on behalf of the Big Ten Conference.

**SYNOPSIS:** This proceeding raises the issue of whether Cook County Parcel Index Number 12-02-114-060 (hereinafter the "subject property" or the "subject parcel") should be exempt from 1994 real estate taxes under 35 ILCS 200/15-35.<sup>1</sup> In relevant part, that statute provides as follows:

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1. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks

All property donated by the United States for school purposes and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt [from real estate taxation] whether owned by a resident or non- resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:

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(c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely.

The controversy arises as follows:

On June 30, 1995, the Big Ten Conference, Inc. (hereinafter the "Conference" or the "applicant") filed a Real Estate Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board"). (Dept. Ex. No. 2). The Board reviewed applicant's complaint and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be denied. The Department accepted this recommendation on December 22, 1995 and issued a certificate finding that the subject parcel was neither in exempt ownership nor in exempt use. (*Id.* ).

Applicant filed a timely request for hearing as to this denial on January 8, 1996 (Dept. Ex. No. 2) and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence, and a careful review of the record, I recommend that the subject property not be exempt from 1994 real estate taxes.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein, namely that the subject parcel was neither in exempt ownership nor in exempt use during 1994, are established by the admission into evidence of Dept. Ex. No. 2.

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exemption from 1994 real estate taxes. Therefore, the applicable provisions are those found in

2. The subject parcel, which applicant assumed ownership of via a warranty deed dated April 26, 1990, is located at 1500 West Higgins Road, Park Ridge, IL 60068. It is improved with a 13,182 square foot building. *Id*; Applicant Ex. No. 12; Tr. p. 51-52.

3. The building is divided into two stories. Each story contains approximately 50% of the total building area. Dept. Ex. No. 2; Tr. pp. 39-40.

4. The first floor contains a reception area, conference rooms and a kitchen. The second floor holds the Conference's administrative offices. *Id*.

5. The Conference uses the building as a worksite for many of its employees, such the commissioner and other administrative personnel. Clerical and support staff also work in the building, as do people involved in various Conference functions, such as managing sports championships, negotiating contracts on behalf of member universities, hosting promotional luncheons, monitoring and enforcing compliance with all applicable rules (especially those which pertain to the Conference's academic and eligibility standards), developing policy directives, assigning officials (referees, etc.) for various athletic events and conducting supervision thereof. Tr. pp. 39, 42-44.

6. Applicant also uses the building to conduct meetings. It conducted approximately 110 meetings at the subject property during 1994, approximately 60% of which did not entail discussion of athletic activities. Tr. pp. 40, 42.

7. One meeting involved the education deans from each of the member universities,<sup>2</sup> who met to discuss common matters. Tr. p. 40.

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the Property Tax Code, 35 **ILCS** 200/1 *et seq.*

2. For information on Conference membership, *See*, Findings of Fact 13E and 14, *infra* at pp. 5 - 6.

8. Applicant also coordinates participation in its Success Comes From Reading Everyday (hereinafter "SCORE") program at the building. Applicant designed SCORE as a mechanism for encouraging local school children to improve their reading skills. Tr. p. 41.

9. Applicant participates in SCORE by providing money for schools to purchase books. It also distributes awards and obtains involvement from its employees, some of whom become involved on a volunteer basis. *Id.*

10. The Conference also gives occasional seminars on various topics, including coaching and officiating, at the subject property. It does not, however, offer classes on a regularly scheduled basis. Tr. pp. 42-43, 60.

11. Applicant did not lease the subject property to third parties in 1994. It did, however, allow other universities and the local school district to use its facilities during that time. Tr. pp. 50-51.

12. The Conference was originally formed in 1896. Its founding members were a group of Midwest university presidents who met to address various problems associated intercollegiate athletics. One problem of particular concern was the practice of barnstorming, wherein players moved from school to school to compete but did not enroll as true students at any one university. Applicant Ex. No. 6; Tr. pp. 9-10.

13. Applicant was issued a Certificate of Incorporation by the Office of the Secretary of State of the State of Delaware on November 16, 1987. Said Certificate recites, *inter alia*, that:

A. The Conference is organized exclusively for charitable, educational and scientific purposes consistent with Section 501(c)(3) of the Internal Revenue Code;

B. Its specific organizational purposes are: (1) to control and regulate intercollegiate athletics as institutional activities; (2) to encourage sound academic practices for student athletes and (3) to

establish harmonious intercollegiate relationships among member institutions;

C. Applicant shall have no authority to issue capital stock;

D. Membership is expressly limited to colleges and universities which are exempt from taxation pursuant to Section 501(a) of the Internal Revenue Code as organizations described in Section 501(c)(3) of the Code and to colleges and universities of the type described in Section 511(2)(B) of same;

E. Its current members are the University of Illinois at Urbana-Champaign, Indiana University, the University of Iowa, the University of Michigan-Ann Arbor, Michigan State University, the University of Minnesota, Northwestern University, the Ohio State University, Purdue University and the University of Wisconsin-Madison;<sup>3</sup>

F. No part of the corporation's net earnings are to inure to the benefit of or be distributable to its members, directors, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and make payments and distributions in furtherance of its corporate purposes;

G. Applicant shall neither participate in nor devote a substantial part of its activities to influencing public legislation or engaging in other political activity;

H. Applicant's daily business affairs shall be managed by a Board of Directors which shall consist of the Chief Executive Officers, (Presidents or Chancellors) of each of the member;

I. A director may not be removed so long as he or she is the Chief Executive Officer of a member university;

J. In the event of corporate dissolution, the Board of Directors shall, after paying or making provisions for the payment of all liabilities of the corporation, dispose of all the assets thereof as the Board of Directors shall determine, provided that such distribution

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3. All Conference members except Northwestern are publicly-supported universities. Tr. pp. 12 - 13. For additional information about each member's operations, *See*, Applicant Ex. Nos. 1 and 6. For information and argument about the effect of their respective tax-exempt statuses, *See, infra* pp. 20-23.

is for charitable, educational or scientific purposes consistent with Section 501(c)(3) of the Internal Revenue Code.

Applicant Ex. No. 2.

14. Applicant amended its Certificate of Incorporation on June 3, 1996. This amendment provided that: (1) membership in the conference shall be determined in accordance with the by-laws but shall be limited to (i) organizations described in Section 509(a)(1) or (2) of the Internal Revenue Code, and (ii) colleges and universities which are exempt from taxation pursuant to Section 501(a) of the Internal Revenue Code as organizations described in Section 501(c)(3) of same or colleges and universities of the type described in Section 511(a)(2)(B) of the Internal Revenue Code; (2) a new member may be added or a current member may be removed only by affirmative vote of not less than 70% of the then existing members in good standing; (3) the members shall each be entitled to one vote on all matters submitted to a vote at a meeting of the members; (4) the roster of current members was increased to include the addition of Pennsylvania State University and (5) upon dissolution of the corporation, the corporation's assets remaining after discharging the corporation's liabilities shall be distributed to the corporation's members on a pro-rata basis. Applicant Ex. No. 13.

15. Applicant's by-laws contain a purpose statement that is similar to the one found in the Conference's Certificate of Incorporation. The by-laws also detail the specific duties assigned to the Board of Directors and establish mechanics for accomplishing same. They also provide, *inter alia*, for the following corporate officers: Chair, Vice-Chair, Commissioner of Athletics (who is applicant's chief executive officer), Secretary, Assistant Secretary and Treasurer. Applicant Ex. No. 5.

16. The Conference carries out its operations according to a handbook that sets forth in great detail its rules of organization and procedure, rules of eligibility, various agreements for

men's and women's programs as well as numerous appendices. This handbook provides, *inter alia*, that:<sup>4</sup>

A. Only a university having complete faculty control of its intercollegiate athletic programs may hold membership in the Conference. Faculty control is achieved whenever authority over a university's intercollegiate athletic programs is vested in a university agency composed entirely of faculty members or in which faculty members are in a majority;

B. To be eligible for membership, a university must sponsor seven varsity intercollegiate sports, including at least two team sport involving all-male teams and seven varsity intercollegiate sports, including at least two team sports involving all-female teams;

C. The Conference recognizes the transcendent priority of a student-athlete's academic collegiate experience. It places its highest values upon high academic standards. The student-athlete is student first, athlete second;

D. Applicant will promote the above concept nationally, while maintaining its own academic integrity by unilaterally establishing standards that may exceed those accepted nationally;

E. The recruitment and admission of student athletes must be consistent with those policies and practices established for all undergraduate students at each Conference member institution;

F. Student-athletes have the right to regularly prepare for and attend classes and final examinations without significant interruption from athletic participation;

G. Each Conference member institution will adopt and adhere to policies which respect the academic priority of the student athlete. Such policies will only permit a schedule of practice, training and competition which will result in a minimum loss of class time and minimum conflict with a student-athlete's final examination schedule;

H. Each member institution will provide every student-athlete with the opportunity to earn a baccalaureate degree;

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4. See Applicant Ex. No. 6 for a detailed description of the handbook's contents.

I. The Conference recognizes the imperative of institutional control over intercollegiate athletic programs. To this end, each Conference member institution will self-report any violations and will establish a program of compliance which consists of education, monitoring and investigating violations. The compliance program will inform is athletic personnel and student-athletes of Conference and National Collegiate Athletic Association (hereinafter "NCAA") legislation and will emphasize the academic principles and priorities of the Conference;

J. Each member university shall take prompt and appropriate remedial action whenever it finds that it is more likely than not that a violation has occurred;

K. The student-athletes of a member institution and individuals employed by or associated with that institution shall conduct themselves with honesty and sportslike behavior in accordance with the agreements of the Conference;

L. All member institutions shall share equally in supporting the cost of Conference office operations. To this end, the Conference office will be supported by revenues derived from three primary sources: annual institutional assessments, annual assessments against television income and an annual share of the Rose Bowl receipts;

M. The Conference shall promote competitive equality and collegiality through the distribution of television revenues, tournament and bowl receipts and football games;

N. The Board of Directors (referred to in the handbook as the "Council of Presidents/Chancellors"), while maintaining ultimate responsibility for Conference governance unto itself, delegates day-to-day managerial authority to various standing committees, including the Faculty Representatives,<sup>5</sup> Joint Group,<sup>6</sup> Academic Progress and Eligibility, Directors of Athletics, Women's Athletic Administrators and Compliance;

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5. This committee consists of at least one faculty member per member university. Its jurisdiction includes developing eligibility rules. For additional information about the jurisdiction and responsibilities of other committees, *See*, Applicant Ex. No. 6.

6. The joint group consists of the faculty representatives and the athletic directors or the women's senior administrator [sic] for athletics at each member university. For specific information about the Joint Group's jurisdiction and responsibilities, *See*, Applicant Ex. No. 6.



O. The Conference shall abide by a Gender Equity Action Policy whereby member institutions commit to a 60%-40% male-female participation level by June 30, 1997;

P. The Conference is committed to the principle of affirmative action and equal opportunity in all its athletic programs;

Q. Member universities shall not use various programs for students from underprivileged or culturally deprived backgrounds as a mechanism for recruiting or subsidizing student-athletes. Students admitted to these programs may, however, qualify for athletic participation and for financial aid which is related to their athletic abilities by the same criteria and standards which apply to all other students;

R. Student-athletes participating in intercollegiate athletics at member universities must, with certain well-defined exceptions, complete their seasons of eligibility within five years of the date when any one of the following conditions occur: (1) a student-athlete initially registers in a minimum full-time program of studies for a regular term and attends the student's first day of classes for that term; (2) an individual represents the institution in intercollegiate athletics, even if the student-athlete is not enrolled as a full-time student; or (3) when a student-athlete is certified by the Director of Athletics as having reported for regular uniformed practice prior to the beginning of any term and who subsequently does not enroll for that term, the student athlete shall complete his or her seasons of eligibility within five years from the date the student-athlete reported for practice;

S. To be eligible for competition and financial aid, a student athlete must meet the following requirements: (1) he or she must be in residence at least two semesters, two trimesters, or three quarters at the certifying Conference institution, except if the student-athlete is a transfer student who qualifies for an exception or waiver under the applicable NCAA by-law; (2) he or she must be making progress toward fulfilling the requirements for his or her baccalaureate degree by earning a minimum number of degree credits<sup>7</sup> and maintaining a specified cumulative grade point average<sup>8</sup> based on the years in residence at a collegiate institution;

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7. The minimum credit requirements are: (1) during the first year, completion of 12 units per term based on the freshman academic requirements; (2) entering the second year, satisfactory completion of at least 24 semester or 36 quarter units that count toward the degree, which must be earned at the certifying institution (transfer students excepted); (3) entering third

T. Member institutions shall adhere to agreements affecting application of rules in recognized sports, sportlike conduct, conduct of personnel, recruiting, expenses and benefits, playing and practice seasons, conference champion and NCAA automatic qualifier and Administration of post-season football.<sup>9</sup>

Applicant Ex. No. 6; Tr. pp. 23-28, 30-37.

17. The Internal Revenue Service granted applicant exemption from federal income tax on May 12, 1989. The Service granted this exemption pursuant to Section 501(a) of the Internal Revenue Code, based on its conclusion that applicant qualified as an organization described in Section 501(c)(3) thereof. Applicant Ex. No. 3.

18. The Department granted applicant exemption from Illinois Use and related sales taxes on September 23, 1994. The Department granted this exemption based on its conclusion that applicant was organized and operated exclusively for charitable purposes. Applicant Ex. No. 4.

19. An audit indicates that applicant's total revenues for the fiscal year ending June 30, 1994 were \$4,210,364.00. Said revenues were attributable to the following sources:

SOURCE	AMOUNT	% OF TOTAL <sup>10</sup>
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year, satisfactory completion of at least 51 semester or 77 quarter units that count towards the degree; (4) entering the fourth year, satisfactory completion of at least 78 semester or 117 quarter units that count towards the degree and (5) entering the fifth year, satisfactory completion of at least 105 semester or 158 quarter units that count towards the degree.

8. The minimum grade point requirements are: (1) during the first year, 1.65 at the end of fall and/or winter terms during the freshman academic year and 1.80 at the end of the freshman academic year; (2) entering the second year, 1.80 for each term during the second year; (3) entering the third year, 1.90 for each term during the third year; (4) entering the fourth year, 2.00 for each term during the fourth year and (5) entering the fifth year, 2.00 for each term during the fifth year.

9. For details about the substance of these agreements, *See*, Applicant Ex. No. 6.

Operating Revenues		
*Assessments to Members	\$1,320,000.00	31%
*Television Assessments	\$1,092,350.00	26%
*Rose Bowl Revenue	\$ 459,307.00	11%
*Promotions	\$ 78,942.00 <sup>11</sup>	2%
*Royalties & Licensing	\$ 444,328.00	10.5%
*Championship Events	\$ 112,178.00	3%
*Publications	\$ 19,040.00	<1%
*Investment Income	\$ 85,879.00	2%
*Unspecified Other	\$ 22,078.00	<1%
<b>SOURCE (CONT'D)</b>	<b>AMOUNT (CONT'D)</b>	<b>% OF TOTAL (CONT'D)</b>
Program Revenues		
*Grant Revenues	\$ 53,000.00	1.2%
*Higher Education Media Campaign	\$ 523,262.00	12.4%
<b>Total</b>	<b>\$4,210,364.00</b>	

Applicant Ex. No. 8.

20. The audit also discloses that applicant incurred \$3,872,989.00 in total expenses during the same period. Said expenses were attributable to the following sources:

<b>SOURCE</b>	<b>AMOUNT</b>	<b>% OF TOTAL</b>
Operating Revenues		
*Salaries & benefits	\$1,427,528.00	37%
*Office Operations	\$ 462,692.00	12%
*Promotions	\$ 282,788.00 <sup>12</sup>	7%
*Royalties & Licensing	\$ 12,555.00	<1%
*Travel	\$ 186,906.00	5%
*Conference Meetings	\$ 71,011.00	2%
*Awards	\$ 37,279.00	<1%
*Professional Fees	\$ 167,254.00	4%

10. All percentages shown herein are approximations derived by dividing the category of income or expense (e.g. membership assessments) by the appropriate total. Thus, for example, \$1,320,000/\$4,210,364.00 = .3135 (rounded) or approximately 31%.

11. These revenues were derived from the following sources: Football Kickoff Luncheon, \$42,396.00; Men's (Basketball) Tipoff Luncheon, \$28,059.00; Women's Tipoff Luncheon, 6,549 and Volleyball Luncheon, 1,965.00.00.

12. These expenses were incurred as a result of the following activities: Kickoff Luncheon, 42,391.00; Men's Tipoff Luncheon, 24,789.00; Women's Tipoff Luncheon, 9,135.00; Volleyball Luncheon, 1,743.00; Outreach-Project SCORE, 13,953.00; T.V. Promotion, \$74,621.00; Championship Enhancement, \$62,242.00; Women's Basketball Tour, \$41,001.00 and Unspecified Other, \$12,913.00.

*Championship Events	\$ 25,262.00	<1%
*Officiating	\$ 77,494.00	2%
*Miscellaneous	\$ 41,893.00	1%
Program Expenses		
*Grant Payments	\$ 122,818.00	3%
*Higher Education Media Campaign	\$ 523,262.00	13.5%
Building Expenses		
*Real Estate Tax	\$ 71,824.00	2%
*Depreciation & Amortization	\$ 227,293.00	6%
*Interest & Fees	\$ 135,130.00	3.5%
<b>Total</b>	<b>\$3,872,989.00</b>	

*Id.*

21. Another audit indicates that applicant's total revenues for the fiscal year ending June 30, 1995 were \$4,393,755.00. Said revenues were attributable to the following sources:

<b>SOURCE</b>	<b>AMOUNT</b>	<b>% OF TOTAL</b>
Operating Revenues		
*Assessments to Members	\$1,320,000.00	30%
*Television Assessments	\$1,063,825.00	24%
*Rose Bowl Revenue	\$ 466,645.00	11%
*Promotions	\$ 87,668.00 <sup>13</sup>	2%
*Royalties & Licensing	\$ 484,812.00	11%
*Championship Events	\$ 50,604.00	1%
*Publications	\$ 18,473.00	<1%
*Lawsuit Settlement	\$ 17,534.00	<1%
*Investment Income	\$ 160,250.00	4%
*Unspecified Other	\$ 28,799.00	<1%
Program Revenues		
*Grant Revenues	\$ 128,000.00	3%
*Higher Education Media Campaign	\$ 93,435.00	2%
Net Assets Released from Board Designation	\$ 357,707.00	8%
Net Assets Released from Restriction	\$ 116,003.00	3%
<b>Total</b>	<b>\$4,393,755.00</b>	

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13. These revenues came from the following sources: Kickoff Luncheon, \$52,753.00; Men's Tipoff Luncheon, 27,766.00; Women's Tipoff Luncheon, \$7,025.00 and Volleyball Luncheon, \$124.00.

Applicant Ex. No. 9.

22. The audit also discloses that applicant incurred \$3,976,495.00 in total expenses during the same period. Said expenses were attributable to the following sources:

<b>SOURCE</b>	<b>AMOUNT</b>	<b>% OF TOTAL</b>
Operating Revenues		
*Salaries & benefits	\$1,644,743.00	41%
*Office Operations	\$ 463,359.00	12%
*Promotions	\$ 103,178.00	2.6%
*Program	\$ 221,071.00 <sup>14</sup>	5.5%
<b>SOURCE (CONT'D).</b>	<b>AMOUNT (CONT'D)</b>	<b>% OF TOTAL (CONT'D)</b>
*Royalties & Licensing	\$ 31,053.00	<1%
*Travel	\$ 186,306.00	5%
*Conference Meetings	\$ 81,162.00	2%
*Awards	\$ 34,062.00	<1%
*Professional Fees	\$ 233,950.00	6%
*Championship Events	\$ 30,693.00	<1%
*Officiating	\$ 81,296.00	2%
*Miscellaneous	\$ 53,873.00	1%
Program Expenses		
*Grant Payments	\$ 128,000.00	3%
*Higher Education Media Campaign	\$ 198,657.00	5%
Building Expenses		
*Real Estate Tax	\$ 101,193.00	2.5%
*Depreciation & Amortization	\$ 226,527.00	6%
*Interest & Fees	\$ 157,372.00	4%
<b>Total</b>	<b>\$3,976,495.00</b>	

*Id.*

23. Applicant distributed \$43.5 million to its member universities during 1994. Members used most of these funds to help fund their respective athletic programs. Applicant Ex. No. 10; Tr. pp. 47-48.

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14. These expenses were incurred as a result of the following activities, Outreach-Project SCORE, \$17,433.00; Television Promotion, \$79,225.00; Championship Enhancement, \$70,509.00; Women's Basketball Tour, \$41,486.00 and Unspecified Other, 12,418.00.

24. Applicant generally did not restrict the way in which the members spent these distributions. However, any amounts earmarked for student-athletic scholarships were subject to the condition that the student-athlete comply with the individual university's policy regarding eligibility for financial aid. Tr. pp. 47-48.

25. Almost all of the approximately 6,700 student-athletes who participate in Conference athletic programs receive some form of financial aid. Tr. p. 47.

26. The member universities also made a limited (exact amount unspecified) amount of these disbursements available for general (non-student-athlete) scholarships. Tr. pp. 47-48.

### **CONCLUSIONS OF LAW:**

An examination of the record establishes that this applicant has not submitted evidence and argument sufficient to warrant exempting the subject parcel from 1994 real estate taxes. Accordingly, under the reasoning given below, the Department's determination that said parcel does not satisfy the statutory requirements set forth in 35 ILCS 200/15-35 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety

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Professionals v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 **ILCS** 200/1 *et seq.* The governing provisions of that statute are, for present purposes, found in Section 200/15-35. In relevant part, that provision states as follows:

All property donated by the United States for school purposes and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt [from real estate taxation] whether owned by a resident or non- resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:

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(c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely.

Our courts have established that the following rules of statutory construction apply in all property tax exemption cases: first, a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation (People ex. rel. Nordlund v. Home for the Aged, 40 Ill.2d 91 (1968)); second, the party seeking exemption bears the burden of proof (Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985)); third, such party can not obtain exemption unless it presents clear and convincing evidence of conformity with all

applicable statutory and common law requirements therefor (*Id.*); fourth, the word "exclusively," when used in Section 200/15-35 and other tax exemption statutes, means "the primary purpose for which property is used and not any secondary or incidental purpose" (Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993)) and fifth, "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively exempt activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id.*

An analysis of whether this applicant has met its burden of proof begins the following definition of "school[.]" originally articulated in People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911), (hereinafter "McCullough"), which Illinois courts have used to analyze claims arising under Section 200/15-35 and its predecessor provisions:<sup>15</sup>

A school, within the meaning of the Constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptance [sic] of the word.

McCullough at 137. *See also*, People v. Trustees of Schools, 364 Ill. 131 (1936); People ex rel Brenza v. Turnverein Lincoln, 8 Ill. 2d 188 (1956), (hereinafter "Brenza").

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15. As noted in footnote 1, only the Property Tax Code, 35 **ILCS** 200/1-3 *et seq.*, governs disposition of the instant case. However, it should be noted that the Revenue Act of 1939, 35 **ILCS** 205/1 *et seq.*, contained statutes governing property tax exemptions for the 1992 and 1993 tax years. The exemption provisions for tax years prior to 1992 were contained in Ill. Rev. Stat. 1991 par. 500 *et seq.* These provisions, as well as their predecessors, were repealed when the Property Tax Code took effect January 1, 1994. *See*, 35 **ILCS** 200/32-20.



One must also recognize the economically-based policy rationale whereby our courts have justified the exemption of "schools." This rationale, best articulated in Brenza, *supra*, is as follows:

It seems clear from the foregoing that this constitutional tax exemption for private educational institutions was intended to extend only to those private institutions which provide at least some substantial part of the educational training which otherwise would be furnished by publicly supported schools, academies, colleges and seminaries of learning and which, to some extent, thereby lessen the tax burden imposed upon our citizens as the result of the public educational system.

Brenza at 202-203.

Subsequent decisions have sought to enforce this rationale and the aforementioned definition of "school" by requiring private entities, such as applicant, to prove two propositions by clear and convincing evidence: first, that applicants offer a course of study which fits into the general scheme of education established by the State; and second, that applicants substantially lessen the tax burdens by providing educational training that would otherwise have to be furnished by the State. Illinois College of Optometry v. Lorenz, 21 Ill. 219 (1961), (hereinafter "ICO"). *See also*, Coyne Electrical School v. Paschen, 12 Ill.2d 387 (1957); Board of Certified Safety Professionals of the Americas v. Johnson, 112 Ill. 2d 542 (1986); American College of Chest Physicians v. Department of Revenue, 202 Ill. App.3d. 59 (1st Dist. 1990); Winona School of Professional Photography v. Department of Revenue, 211 Ill. App.3d 565 (1st Dist. 1991).

This applicant does not qualify under the preceding criteria because its primary purpose, as reflected in its organizational documents, is to coordinate intercollegiate athletics. As such, the Conference itself does not offer any systematic course of instruction, save for officiating and other seminars that are incidental to its primary purpose. Moreover, applicant's administrative, organizational, oversight and negotiating functions appear more characteristic of a non-exempt commercial management firm than a "school." Therefore, applicant's entitlement to exemption,

if any, must be measured against the " other educational purposes" language contained in Section 200/15-35(c).

The leading case on this topic is Association of American Medical Colleges v. Lorenz, 17 Ill.2d 125 (1959) (hereinafter "Lorenz"). There, the Illinois Supreme Court held that a building, wherein appellant conducted various activities intended to improve educational standards at member medical schools, qualified for exemption under the then-existing version of Section 200/15-35.<sup>16</sup> Appellant's uses of the property at issue included: (1) publishing a journal and a directory showing admission requirements to member medical schools; (2) compiling student information designed to assist medical schools in developing programs of instruction; (3) sponsoring admission tests and teaching institutes; (4) evaluating students intellectual and personality characteristics as well as their relationship to scholastic and professional performance; (5) maintaining a library of motion picture films for use by medical schools; (5) performing various placement functions; appraising curricula of member medical schools and colleges and (6) joining in the accreditation of all medical schools in the United States via its inspection and liaison committee.

The court held that these uses qualified the property for exemption because they were "identical to those which would afford exemption if conducted separately by member institutions." Lorenz at 129. Thus:

While exemption provisions must be strictly construed, and taxation upheld if there is any doubt about the matter ... (Citations omitted) ... there can be no doubt that plaintiff's services in improving educational standards meet the statutory test. Where the functions themselves qualify for exemption it does not matter that they are performed by a separate organization rather than the respective member institutions. It is not the policy of the law to penalize efficiency or to favor duplication of effort. If ways of doing things have become outmoded or replaced by more efficient and realistic methods of management, the law will look to substance, not to the mere forms.

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16. That version was found at Ill. Rev. Stat. 1957, ch. 120, par. 500.

*Id.*

The above rationale encountered a vigorous dissent from Justice Hershey, who, relying on Milward v. Paschen, *supra*, argued that:

... To qualify for tax exempt status in Illinois, it must be shown that the institution assumes some of the burden of education that would otherwise necessarily be borne by the taxpayer. The educational facilities provided must fit within the general scheme of education founded by the State and provided by public taxation, and such governmental obligation and functioning must be substantially lessened by the institution claiming exemption.

This basic principle is not incorporated into the majority opinion, resulting, I believe, in an incomplete statement and application of existing legal principles.

Lorenz at 130 (Hershey, J. dissenting).

In comparing the present case to Lorenz, I am bound to recognize that all of applicant's members except Northwestern are publicly-supported universities. I am further bound to recognize (via administrative notice) that the properties of two member institutions, the University of Illinois and Northwestern, are exempt from real estate taxation in the State of Illinois.<sup>17</sup> Despite these facts, and assuming that applicant's remaining members are exempt from real estate taxation in their respective jurisdictions by virtue of their status as publicly-

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17. For further information on the University of Illinois' tax exempt status, *See*, People ex. rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934); People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill.2d 363 (1944). For additional information as to Northwestern's exemption from real estate taxation, which it obtained via the terms of its legislatively-granted corporate charter, *See*, Private Laws of 1855, p. 483; People ex. rel. County Collector of Cook County v. Northwestern University, 51 Ill.2d 131 (1972).

supported schools,<sup>18</sup> I do not believe that the subject property is exempt under the rationale articulated in Lorenz.

Unlike the Lorenz appellant, this applicant does not play any role in the accreditation of its member institutions. Nor does it establish admissions policies and/or academic standards for same. These functions are ostensibly reserved to the appropriate legislative or regulatory authorities, such as the General Assembly<sup>19</sup> or the Illinois Board of Higher Education.<sup>20</sup>

One might think that the Conference's formulation of eligibility standards are similar to some of the activities found to be exempt in Lorenz. However, applicant's standards only affect a student's eligibility for athletic competition. Thus, unlike Lorenz, they do not have any bearing on whether the prospective student-athlete will be admitted to a member university or demonstrate aptitude for completing the baccalaureate degree requirements thereof.

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18. This assumption is based on the following rationale, which holds that the exemption of government-owned property:

... rests upon the most fundamental principles of government, being necessary in order that the functions of government not be unduly impeded, and that the government not be forced into the inconsistency of taxing itself in order to raise money to pay over to itself, which money could be raised only by taxation ...[.]

United States v. Hynes, et al, 20 F. 3d 1437 (7th Cir. 1994), citing 12 Am. & English Encyclopedia.

*See also*, 35 **ILCS** 200/15-55, (providing for exemption of property owned by the State of Illinois); Public Building Commission of Chicago v. Continental Illinois National Bank & Trust Company of Chicago, 30 Ill.2d 115 (1963), (The sole test for the exemption of property of the State of Illinois is ownership).

19. Students seeking to attend the University of Illinois are subject to the legislatively-imposed admission requirements contained in 110 **ILCS** 305/8.

20. For additional information on the Board's jurisdiction, its regulatory authority and its capacity to approve the curricula of degree-granting institutions, *See*, 110 **ILCS** 205/0.01 *et seq*; 110 **ILCS** 1010/0.01 *et seq.* and 110 **ILCS** 1010/4 through 1010/7 and 1010/9. Those

This case is also factually distinguishable from Lorenz in that applicant does not sponsor admission tests or perform other evaluative functions related to the admissions process. Nor does it publish any journal or directory containing information about admission requirements at member universities.

Applicant also does not appraise the curricula of its members or maintain any type of library used by same. Rather, it coordinates the non-exempt business aspects of its members' athletic programs. Such coordination undoubtedly reduces the administrative costs associated with such programs to constituent members, which are the primary beneficiaries of applicant's efforts. Hence, said efforts do not confer anything but an incidental benefit on the general public.<sup>21</sup> Therefore, they are legally insufficient in satisfying both the second prong of the ICO test and the concern expressed in Justice Hershey's dissent in Lorenz.

In making the above conclusion, I am not unaware that applicant's membership consists entirely of tax exempt-universities. Nevertheless, this status only attaches to the constituent members in their individual capacities, not to applicant which has a corporate and legal identity separate and distinct from that of its constituents. Thus, neither this individual collection of exempt statuses nor the applicant's exemptions from other non-related taxes<sup>22</sup> establishes that the

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wishing further information on the Board's powers vis-à-vis curriculum oversight and admission standards are referred to 110 **ILCS** 205/6, 205/9.07, 205/9.23 and 205/10.

21 . For additional analysis of the public benefit aspect and its economically-based supporting rationale, *See, Turnverein "Lincoln" v. Department of Revenue*, 358 Ill. 135 (1934); *Yale Club of Chicago v. Department of Revenue*, 214 Ill. App.3d 468 (1st Dist. 1991); *DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations*, 274 Ill. App.3d 461 (2nd Dist. 1995).

22. I use the adjective "non-related" to connote the statutory, conceptual and functional differences between the *ad valorem* real estate taxes presently under review and the federal income, State use and other related sales taxes which are not at issue herein even though applicant is exempt therefrom.

Conference *itself* uses the subject parcel for exempt purposes. Cf. People ex rel County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970).

The foregoing analysis demonstrates that applicant does not offer a systematic course of instruction at the subject premises, and therefore is not a "school," within the meaning of Section 200/15-35. Consequently, the Department's finding that the subject parcel is not in exempt ownership<sup>23</sup> should be affirmed. Said analysis further establishes that applicant uses the subject premises primarily for the non-exempt purpose of coordinating the business aspects of its members' athletic programs. Therefore, the Department's finding that said parcel is not in exempt use should likewise be affirmed.

Applicant attempts to alter the preceding conclusion by relying on its SCORE program. However, the audits admitted as Applicant's Ex. Nos. 8 and 9 clearly establish that this program accounted for less than 1% of applicant's total expenditures during the 1994 and 1995 fiscal years.<sup>24</sup> The audits also reveal that SCORE accounted for approximately 5% of the Conference's promotional expenditures during fiscal 1994<sup>25</sup> and 8% of its program expenses during fiscal

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23 . Applicant devotes a substantial amount of its brief to arguments seeking to prove that it acquired ownership of the subject parcel under exempt circumstances. These arguments are misplaced because the plain language of Section 200/15-35 imposes a very specific ownership requirement by using the word "of" (which inherently connotes ownership, *See, Methodist Old People's Home v. Korzen*, 39 Ill.2d 149 (1968)), to modify the exempt entity, "schools." Accordingly, I conclude that the Department's finding of non-exempt ownership was based on its conclusion that applicant does not qualify as a "school" rather than the circumstances under which applicant assumed ownership of the subject parcel.

24. I derived this figure by adding applicant's SCORE Expenditures for 1994 (\$13,953.00) to its SCORE expenditures for 1995 (\$17,433.00) and dividing the total by applicant's total expenditures for those years (\$3,872,989.00 + \$3,976,495.00 = \$7,849,484.00). Thus, \$31,386.00/\$7,849,484.00 = .0039 (rounded) or less than 1%.

25. \$13,953.00/\$282,788.00 = .0493 (rounded) or approximately 5%.

1995.<sup>26</sup> To the extent that these documents further establish that applicant devoted the vast majority of its other expenses to its own operations, and received most of its revenues from membership assessments and other non-SCORE-related sources, (i.e. television assessments and Rose Bowl Revenue), I must conclude that any uses of the subject parcel associated with this program are incidental to those connected with applicant's non-exempt commercial management functions.

Applicant also posits that the decisions of other jurisdictions, National Collegiate Realty Corporation v. Board of Count Commissioners of Johnson County, 690 P.2d 1366 (1984) and In the Matter of the Appeal of the Atlantic Cost Conference, 434 S.E.2d 865 (N.C. App. 1993), aff'd. without opinion at 336 N.C. 63 (1994), support its request for tax exemption. However, I am not bound by these decisions, particularly where (as demonstrated above), applicant fails to satisfy both the statutory and common law exemption requirements imposed by Illinois law.

In summary, the subject parcel does not qualify for exemption under Section 200/15-35 because applicant itself is not a "school" within the meaning of that provision. Nor does its primary use of the subject parcel, which I emphasize is associated with managing the non-exempt business aspects of its members' athletic programs, satisfy the "other educational purposes" use language contained in Section 200/15-35(c). Therefore, the Department's decision denying said parcel exemption from 1994 real estate taxes should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that Cook County Parcel Index Number 12-02-114-060 not be exempt from 1994 real estate taxes.

02/20/98

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26.  $\$17,433.00/\$221,071.00 = .0788$  (rounded) or approximately 8%.

Date

Alan I. Marcus,  
Administrative Law Judge